IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPL. NO.4146 OF 2004.
IN
CRIMINAL APPEAL NO. 1091 OF 2004.

Mr. Ganesh Bhimrao Lokhande. ..Applicant.

VERSUS.

The State of Maharashtra. ..Respondent.

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Mr. Sudatta Patil for the applicant.
Mr. B.R.Patil, APP for the State.

CORAM: S. B. MHASE &
ANOOP V. MOHTA, JJ.

DATE : DECEMBER 6, 2004.

P.C.:-

1. Heard Mr. Sudatt Patil learned counsel appearing on behalf of the applicant and Mr.B.R.Patil, learned APP for the State.

2. The applicant has been convicted under section 302 of the Indian Penal Code. We find that there are eye-witnesses. However, the incidence has taken place on 5.12.2002 at about 6.00 p.m.. The deceased was a shepherd having 100 sheeps. The Pw.-1 Bhagwan is also a Shepherd. It appears that while both - the deceased and Pw.-1 have taken their sheeps for grazing in the forest and while returning back at evening time the sheeps have entered

into the field of the accused-applicant, when the crops was standing and ready for harvesting. Therefore, the accused who was having axe in his hand rushed towards the deceased and has given only one blow to the deceased. However, the said blow was on left side of the neck. All this has taken place in sudden and anger to protect the crops. Prima-facie, we find that it is very difficult to say that the accused had any intention to commit the murder of the deceased. Prima facie, taking all these facts together we find that the offence may be lesser one. The applicant is in jail since the day of his arrest, practically for a period of two years now. He is an agriculturist. All these facts persuade us to suspend the sentence and grant him bail. Therefore, we pass the following order.

: O R D E R :

The sentence in Sessions Case No. 41 of 2003 decided on 31.8.2004 by the IInd Ad-hoc Additional Sessions Judge, Sangli is hereby suspended till the final decision of the appeal. The applicant be released on bail of Rs.20,000/- with P.R. and surety of like amount. He may

give two sureties for the said amount. The applicant shall report to the Police station Tasgaon on every Sunday at 10.00 to 12.00 a.m.. He shall not tamper with the evidence and threaten the prosecution witnesses.

Application is accordingly disposed of.

(ANOOP V.MOHTA, J.) **(S.B.MHASE,J.)**